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THE TRUSTS.

EDMUND BURKE, the greatest, perhaps, of English statesmen, said that true statesmanship consists in adapting ourselves to the conditions in which we are placed. What are the conditions confronting the American people to-day?

If we take a retrospective view, we have abundant reason to render devout thanksgiving to the Omnipotent Ruler of the Universe for the manifold blessings He has vouchsafed to us as a People. If we look forward to the future, we may reasonably indulge in bright anticipations.

But we may not fold our arms in ignoble ease and shut our eyes to the dangers that threaten.

No intelligent observer of events can deny that there are two great dangers now threatening the perpetuity of our free institutions and the inalienable rights of the people. These dangers arise from the manifest tendency towards Centralization and Consolidation—the Centralization of power in the hands of the General Government, and the Consolidation of the industries and capital of the country in the hands of the few. It is not my purpose in this article to discuss the centralizing tendencies of the times in which we live, but to point out some of the dangers attending the consolidation of industries and capital through the machinery of the Trusts.

What is a Trust? In one sense, a trust is simply the case of one person holding the title of property, real or personal, for the benefit of another who is termed a beneficiary; but such is not the popular acceptation of the term as now used. The distinguishing feature of a trust as now popularly understood is a combination of two or more persons or associations engaged in any particular business, to stifle competition under agreements for controlling and limiting production, lessening the amount of goods placed upon the market, and stipulating for uniform minimum prices of goods sold.

According to this definition, there are almost innumerable trusts,

large and small. Within the last few years more trusts have been organized than had previously existed since the foundation of the government. Without undertaking to enumerate them all, the following may be mentioned among the most powerful: The Transportation Trust, the Steel and Iron Trust, the Standard Oil Trust, the Coal Trust, the Sugar Trust, the Beef Trust, the Tobacco Trust, the Bread Trust, the Leather Trust, the Whiskey Trust, the Tin Plate Trust, the Wire Trust, the Cotton Bagging Trust, etc., etc.

From present indications, it is not extravagant to say that the day is not far distant when a few men will be in absolute control of all the great industrial corporations in the United States, including the great lines of railway from north to south and from east to west, as well as the lines of steamships crossing the Pacific to China, India and Australia, the lines crossing the Atlantic to Europe and Africa, and the lines to the eastern and western coasts of South America.

Recent official publications show that the Iron and Steel Trust, with its capital of more than a billion dollars, and a net annual income of one hundred and forty millions, has the power to control the production and the price of every pound of iron and steel in the country, to prevent the development of any new mines or the establishment of any new plants in its line of business, except upon such terms as it may choose to prescribe. Are not these things sufficient to "give us pause"? What is to become of the farmer, the merchant, the working man and the great body of consumers when the production and sale of all the steel and iron in the country are controlled by the Steel and Iron Trust, when all the sugar is controlled by the Sugar Trust, and all the coal by the Coal Trust, all the bread by the Bread Trust, all the beef by the Beef Trust,, and all the transportation by the Transportation Trust? We may continue to celebrate the natal day of American Independence with the booming of cannon and the singing of the Star-Spangled Banner, but we shall be no longer a free and independent people. Our liberties will have perished, and we shall have become the abject slaves of corporate greed and corporate power.

What is the controlling motive of the trusts, and upon what principle are they defended?

On the 18th of June, 1898, Congress passed an Act creating an

Industrial Commission, and authorized it to report from time to time. After examining sixty-two witnesses, the Commission, on March 1, 1900, made a preliminary report on the subject of the trusts. From testimony adduced, the Commission made a summary of the advantages and disadvantages, leaving the matter somewhat in doubt as to which predominated. But it should be borne in mind that, as a general rule, the witnesses examined were identified with the Trusts, and, as a natural consequence, the evils of the system were not made to appear as strongly as they might otherwise have been.

But notwithstanding the obvious bias of the witnesses generally in favor of the Trusts, no candid mind can examine the testimony without being impressed with the fact that the Trusts have a gigantic power for mischief. Take, for example, the case of those corporations in which the nominal capitalization far exceeds the cash value of their property. This is generally known as "watering the stock." What could be a more serious injury to the public? The prospective purchasers of the stock are not only misled and deceived by the misrepresentations of the promoters and underwriters, but the attempt to pay dividends to the holders of the watered stock greatly enhances the price of the product to the consumers, and seriously affects the wages of the employees.

Unless some check can be applied to the capitalization now so prevalent, we may reasonably anticipate, at a day not distant, a financial crisis which will not only prove ruinous to those who hold the watered stock, but highly injurious to the interests of the public.

Perhaps the most dangerous power which the Trusts may exercise is the power of controlling the output of products and fixing the prices exacted from the consumer. This power is felt to-day in all the channels of trade, and it may be exercised to an alarming extent. Take, for example, the great Anthracite Coal Trust recently organized—a Trust that holds within its grasp the entire output of anthracite coal in many of the great States of the Union, and fixes the price of this necessary commodity to millions of people. When this Trust was organized, the promise was made by its promoters that by economy of management, reduction of expenses and increased revenues accruing from consolidation, the price of coal to the consumer would be greatly reduced. During the first few weeks of the operations of the Trust, that promise was redeemed

and the price of coal was reduced fifty cents per ton. But how is it since the Trust has become master of the situation, and has been enabled to strangle competition? The hopes of the consumers have been sadly disappointed. The price has not been restored to the former figure, but it has been very materially advanced.

As has already been stated, as a general rule, the witnesses who testified before the Industrial Commission upon the subject of the Trusts were prominently identified with them. One of the principal witnesses was Mr. Henry O. Havemeyer, President of the American Sugar Refining Company, and author of the sentiment that the "Mother of all trusts is the Customs Tariff Bill." He seems to have testified with perfect frankness and independence. After declaring that "it is the government through its tariff laws which plunders the people, and the Trusts are merely the machinery for doing it," he apparently justifies the wholesale plunder by maintaining that in a business transaction it is entirely legitimate to take any and every advantage you can of the party with whom you are dealing.

This is a fair specimen of the code of ethics by which the magnates of the Trusts regulate the conduct of their business. It seems that they have adopted the maxim of Rob Roy, the typical robber of his age,

> "That they should take who have the power,
> And they should keep who can."

The law of their being is to crush competition and enjoy monopoly. That the people of this country are becoming alarmed by the growing power of the Trusts has been indicated in every form in which public sentiment can possibly be manifested. The last National Conventions of the Republican party, the Democratic party, the Silver Republican party, and the Populist party all declared their opposition to Trusts. Do these declarations contained in the party platforms mean anything, or are they intended simply as "a delusion and a snare"?

Upon what ground can the Trusts be defended? It may be, as claimed, that the prices of certain articles controlled by them have been reduced, but the inference drawn from this fact is not a legitimate one. Who can say that if there had been free and fair competition, there would not have been a reduction equally as great, or greater? It is well known that prices during the last two de-

cades have been very materially reduced, notably the prices of farm products which are not controlled by the Trusts.

But the Greeks are to be feared even though they bear gifts. Notwithstanding the temporary reduction of prices under certain circumstances, the fact remains that the dangerous power of increasing prices at will may be exercised by them. The reduction in prices sometimes realized from the large combinations is more than overbalanced by the great evil that may be apprehended from the existence of the absolute power to fix the prices of products to the consumers and the rate of wages to the workingman. It is not a sufficient defense of the Trusts to say that their bonds and stocks are held by a large number of people. So also was the land of Europe under the Feudal system, but the control of the land was centralized, and that centralization enabled the Feudal lord to treat those who occupied the land as his abject slaves.

We sometimes hear it said that the Trusts are only the natural evolution and development of industrial conditions; that the evils connected with them will be remedied in the ordinary course of business; and that any attempt to regulate them by law would probably result in more harm than good.

I fear that this theory of natural evolution is closely allied to that theory of evolution in the political world, which threatens to remove all the ancient landmarks and break down all the barriers of the Federal Constitution; and to that other theory of evolution in the religious world, which would teach us to forget the lessons of simple faith which we learned from pious mothers in the days of our childhood, and embark upon the uncertain seas of speculation and infidelity.

From the earliest dawn of jurisprudence, combinations in restraint of trade have been condemned by the common law as criminal. As far back as 1552, during the reign of Edward VI, the English parliament enacted a statute classifying such offences into three classes, "*Forestalling, Regrating* and *Engrossing.*" Hawkins, a writer of recognized authority, in his Pleas of the Crown, maintains the proposition that any attempt to enhance the price of commodities is a criminal offence by the rules of the common law. Lord Coke, in the third book of his Institutes, expresses the opinion that "Forestalling" and kindred acts constitute an offence at the common law.

Lord Kenyon, a great oracle of the common law, upon the trial

of Rusby, who had been indicted for "regrating," in his charge to the jury uttered words favoring free competition in trade, which are as true to-day as they were when spoken. By a long line of judicial decisions based upon the common law, the principle is well settled that agreements tending to monopoly are detrimental to the public interests, contrary to public policy, and therefore illegal. In the case of *Butchers Union* v. *Crescent City etc. Co.*,[1] Mr. Justice Bradley said:

"I hold it an incontrovertible proposition of both English and American law that all mere monopolies are against common right: Monopolies are the bane of the Body Politic at the present day. In the eager pursuit of gain they are sought in every direction. They exhibit themselves in corners in the stock markets, produce markets and in many other ways. If by legislative enactment they can be carried into the common avocations and callings of life, so as to cut off the right of the citizen to choose his avocation, the right to earn his bread by the trade that he has learned, and if there is no constitutional means of putting a check to such enormity, I can only say that it is time that the Constitution was still further amended."

Having seen that combinations in restraint of trade are clearly illegal, let us inquire what is the remedy.

We cannot hope for any relief from Federal legislation, so far as trusts within the States are concerned. Congress has power under the Constitution "to regulate commerce with foreign nations and among the several States, and with the Indian tribes," but it has no power to regulate the internal affairs of the States. By Act of Congress approved July 2, 1890, entitled, "An Act to protect trade and commerce against restraint and monopolies," Congress undertook to deal with the subject so far as interstate commerce is concerned, but as I am advised, only seven or eight suits have been successfully prosecuted by the United States for the enforcement of the Anti-Trust Law. It is evident that it has not met public expectation and has not accomplished the object for which it was intended. Whether the failure has arisen from the want of a more vigorous administration on the part of those in authority, or from defects in the law itself, it is useless now to inquire. But it is respectfully submitted that there is room for improvement in both directions. Surely there must be wisdom and patriotism sufficient in the legislative and executive departments of the Government to apply the necessary corrective to an admitted evil.

[1] 111 U. S. 764.

And now the question arises what power have the State Governments to protect the public within their own borders against monopolies and unlawful combinations in restraint of trade? In answer to that question it would be a waste of time to enter upon a discussion of the federal character of our complex system, and to show what powers have been delegated and what have been reserved by the States. The question has passed beyond the domain of discussion. It is *res adjudicata*. In a recent case,[2] the Supreme Court of the United States said:

"It is well settled that a State has the power to impose such conditions as it pleases upon foreign corporations seeking to do business within it. The statute of Texas of March 30, 1890, prohibiting foreign corporations, which violate the provisions of that Act, from doing business within the State, imposed conditions which it was in the power of the State to impose."

The Waters Pierce Oil Co. was a private corporation incorporated under the laws of Missouri, and its principal offices were situated in St. Louis. It was incorporated to deal in naval stores and to deal in and compound petroleum and other oils and their products, and to buy and sell the same in Missouri and other States. On the 6th day of July, 1889, it filed in the office of the Secretary of State of the State of Texas, in accordance with the requirements of law, a certified copy of its articles of incorporation and received a permit to transact business in the State for the term of ten years. By virtue of the permit, the company engaged in business in the State, and while so engaged, violated the statute of the State against illegal combinations in restraint of trade, and thereby incurred a forfeiture of its permit to do business in the State. The suit brought to enforce such forfeiture was tried in the District Court of Travis county before the court and a jury. A verdict was rendered against the company, upon which judgment was duly entered. The judgment was affirmed by the Court of Civil Appeals and a writ of error was sued out to the Supreme Court. In affirming the judgment of the lower court, the Supreme Court said:

"A corporation is the creature of the law, and none of its powers are original. They are precisely what the incorporating act has made them, and can only be exerted in the manner which that act authorizes. In other words, the State prescribes the purposes of a corporation and the means of executing those purposes. Purposes and means are within the State's control. This is true as to

[2] Waters Pierce Oil Co. *v.* Texas, 177 U. S. 28, decided March 19, 1900.

domestic corporations. It has even a broader application as to foreign corporations." [3]

The doctrine thus announced as to the right of a State to exclude foreign corporations not engaged in interstate commerce, is fully sustained by a long line of decisions, some of the most notable being cited in the foot-note.[4]

In *Paul* v. *Virginia*,[5] the court said:

"Having no absolute right of recognition in other States, but depending for such recognition and enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those States may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security as in their judgment will best promote the public interest. The whole matter rests within their discretion."

This applies, of course, only to corporations not engaged in interstate commerce, nor organized for Federal purposes.[6] In view of these decisions of the Supreme Court, there can be no doubt as to the power of the States to regulate the operations of the Trusts within their own borders. They may provide that any corporation, organized under the laws of the State, which through its own officers, agents or employees shall, in connection with other corporations or individuals, enter into combinations to restrain trade, or for the purpose of fixing, controlling or regulating the prices of commodities, or limiting their production, shall forfeit its charter, and it shall be the duty of the Attorney-General to institute proper proceedings in the courts to declare such forfeiture. They may provide that any corporation organized outside of the State, which shall become a party to or engage in any such combination, shall not be permitted to transact any business, other than interstate commerce, within the State. They may provide that any person, whether acting as an individual or as an officer, agent or employee, who may enter into or become a party to any such combination, or aid or assist the same, shall be guilty of a misdemeanor, and shall be punished by fine and imprisonment.

But notwithstanding the General Government may do much to

[3] It was a *concessum* in the case, however, that the State could not interfere with defendant's right to engage in interstate commerce within the State.

[4] Bank of Augusta *v.* Earle, 13 Peters, 519; Head *v.* Providence Insurance Company, 2 Cranch, 127; Dartmouth College *v.* Woodward, 4 Wheaton, 636; Bank of United States *v.* Dandridge, 12 Wheaton, 64, and Paul *v.* Virginia, 8 Wallace, 168.

[5] *Supra.*

[6] See Leloup *v.* Mobile, 127 U. S. 640; W. U. Tel. Co. *v.* Seay, 132 U. S. 472. Compare Blake *v.* McClung, 172 U. S. 239.

remedy the evils of the Trusts so far as the interstate commerce is concerned, and the State Governments may do much to protect the people from unreasonable and unjust exactions of the Trusts within their own borders, yet the fact remains that full relief cannot be afforded until there shall be a complete revision of the existing Tariff Law, which is conceded to be the "Mother of the Trusts."

JOHN GOODE.

CONTRACTS LIMITING LIABILITY OF CARRIERS FOR NEGLIGENT INJURY TO FREE PASSENGERS.

THE case of *N. & W. Railway Co.* v. *Tanner*,[1] recently decided by Supreme Court of Virginia, is one which presents a very interesting question of law, namely, the question of the validity of a contract by a passenger-carrier, exempting itself from liability for the negligence of its servants in the case of a passenger traveling on a free pass.

The decision of the court holding such contracts invalid, while supported by authority of dignity and weight, is, in the writer's opinion, to be regretted. Without intending any particular criticism of the above decision, it may be of interest to consider the arguments advanced in support of the general line of cases holding views similar to those expressed by the court in the principal case, and also to note how these arguments have been answered, and what we conceive to be the better reason advanced by courts holding the contrary view.

But before passing to a consideration of this question upon common law principles, it might be well to notice the opinion of the court in the case mentioned, with respect to the bearing of section 1296 of the Code of Virginia upon the question at issue. It is not entirely clear from the opinion whether the court in this case rested its decision upon the *statute* or upon *common law*. It would appear, however, that the court considered either the statute or the common law sufficient to warrant its conclusions.

So far as the statute in question is considered, it may, we think, well be doubted whether it was ever designed to compass in its scope the case of a passenger riding on a free pass. The language of section 1296 is as follows:

[1] 8 Va. Law Reg. 182; 41 S. E. 721.